IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4864 OF 2005

1. Dilip Ramkrishna Syryavanshi.
2. Ashok Ramkrishna Syuryavanshi. ... Applicants.

Versus.

The State of Maharashtra. ... Respondent.

Shri Shirish Gupte, Senior Counsel with Shri Sudatta Patil for the Applicants.

Shri K.V.Saste, A.P.P. for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 3rd August, 2005.

P.C.:

1. Heard Shri Shirish Gupte, learned Senior Counsel for the Applicants and the learned A.P.P. for the State. Offence has been registered under sections 302, 201 read with 34 of the Indian Penal Code. The learned Counsel for the Applicants submitted that even going by the case of the prosecution the Applicants have played no role in an offence under section 302 of the Indian Penal Code. He submitted that taking the case of the prosecution at the highest only section 201 can be applied against the Applicants which is a bailable offence. He submitted that with a view to harass the Applicants, after filing of this Application section 120-B of the Indian Penal Code has been applied. He, therefore, submitted that even going by the case of the prosecution no custodial interrogation of the Applicants is required by any stretch of imagination.

2. The learned A.P.P. for the State pointed out that the names of the Applicants were disclosed for the first time in the remand Application dated 21st July 2005 and only on 1st August 2005 section 120-B of the Indian Penal Code has been applied. The learned A.P.P. submitted that custodial interrogation of the Applicants will be necessary considering the material which is available against them.

3. I have considered the submissions. The material on record at present indicates that the Applicants have played a role in sending the assailants away from the Sangli city. The other material on record is that the Applicant No.1 was in the company of Accused No.4 on the day immediately next to the date of incident. In one of the remand applications it is disclosed that there was altercation between the Accused No.1 to 3 and the deceased when the deceased is said to have abused the Applicant No.1. As stated earlier, though belatedly section 120-B has been applied, the material against the Applicants indicates that the Applicants have helped the assailants to go away from Sangli city and in fact one of the Accused was in company with the Accused No.1 on the day after the date of the incident.

4. The Apex Court has held that the gravity of the offence and need for custodial interrogation are the

only two factors which are to be considered in an application for anticipatory bail. Looking to the seriousness of the allegations and gravity of the offence, this is a case where the custodial interrogation of the Applicants is required. In the recent past some other offences have been registered against the Applicants.

5. The Applicants are not entitled to anticipatory bail. The Application is rejected.

6. At this stage the learned Senior Counsel prays for time to surrender. The request is opposed by the learned A.P.P. Considering the facts and circumstances of the case, time is granted to the Applicants to surrender before the Investigating Officer till 8th August 2005.

Judge.